

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOSEPH TODARO, Sr.,	:
Petitioner	:
v.	: Case No. 3:21-cv-205-KAP
BARRY SMITH, SUPERINTENDENT,	:
S.C.I. HOUTZDALE,	:
Respondent	:

Memorandum Order

Petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging the 15-30 year sentence imposed in what he described as Commonwealth v. Todaro, CP-11-CR-265-2017 (C.P.Cambria), after petitioner entered a plea of guilty to rape of a mentally disabled person and to failure to comply with sex offender registration requirements. Petition at 1. I ordered a response from the respondent.

In fact, there were two separate criminal informations against petitioner, and petitioner had cited the wrong one. The 15-30 year sentence imposed after petitioner entered a negotiated counseled plea of guilty to rape of a mentally disabled person was based on an information filed at Commonwealth v. Todaro, CP-11-CR-1510-2017 (C.P.Cambria). The failure to comply with registration requirements, which resulted in a concurrent 5-10 year sentence, was charged in an information filed at Commonwealth v. Todaro, CP-11-CR-265-2017 (C.P.Cambria).

Petitioner's only claim was that trial counsel was ineffective (and all subsequent counsel likewise ineffective to the extent necessary to avoid default) for failing to assert or preserve the claim that in Commonwealth v. Todaro, CP-11-CR-1510-2017 (C.P.Cambria), there had been a Confrontation Clause violation at the preliminary hearing because the Commonwealth used hearsay evidence to establish a *prima facie* case. The respondent's response, styled as a motion to dismiss, addressed this claim without discussing the incorrect case citation (and I did likewise) because the two cases had been linked throughout including in the appeal to the Pennsylvania Superior Court and it was clear what petitioner meant. No part of the petition, the response, or my opinion addressed the conviction for failure to comply with registration requirements or the concurrent 5-10 year sentence at Commonwealth v. Todaro, CP-11-CR-265-2017 (C.P.Cambria).

I found petitioner's claim to have been defaulted, and petitioner filed an appeal. In aid of its review, the Court of Appeals has ordered me to request the entire state court in

Commonwealth v. Todaro, CP-11-CR-265-2017 (C.P.Cambria) and Commonwealth v. Todaro, CP-11-CR-1510-2017 (C.P.Cambria). I accordingly order counsel for the respondent to obtain the state court records in both matters from the Clerk of Court of Cambria County and to file both records with the Clerk of this Court, who shall transmit both records and this order to the Clerk of the Court of Appeals. Only the record in Commonwealth v. Todaro, CP-11-CR-1510-2017 (C.P.Cambria) is relevant.



DATE: June 9, 2022

Keith A. Pesto,
United States Magistrate Judge

Notice by ECF to counsel of record and by U.S. Mail to:

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